Supreme Court, U.S.
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No. 03-

IN THE

Supreme Court of the United States

SABRIYANA M. SINGH

Petitioner,

v.

PRUDENTIAL HEALTH CARE PLAN, INC.,
t/a Prudential Health Care Plan of the Mid-Atlantic,
t/a Prudential Insurance Company of America

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

(1) Whether the Employee Retirement Income Security Act ("ERISA") completely preempts all causes of action for ERISA plan members that are based upon state regulations of the business of insurance within the meaning of ERISA's Savings Clause, 29 U.S.C. § 114(b)(2)(A), as the Fourth Circuit below and the Fifth Circuit have held, or whether claims based exclusively upon such state laws are purely matters of state jurisdiction that do not give rise to removal jurisdiction, as the Second and Third Circuits have held?

(2) Whether ERISA's Enforcement Clause incorporates all actions based upon state laws, without regard to whether they seek to enforce the actual terms of the ERISA plan as written, as the Fourth Circuit below and the Fifth Circuit have held, or whether such claims are not properly claims under ERISA's Enforcement Clause, as the Third and Sixth Circuits have held?

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PARTIES TO THE PROCEEDING

The parties to the proceeding below were petitioner Sabriyana M. Singh, the named plaintiff in a putative class action (as appellant), and Prudential Health Care Plan, Inc. (as appellee).

OPINIONS BELOW

The opinion of the U.S. Court of Appeals for the Fourth Circuit (App. 1-28) is reported at 335 F.3d 278 (4th Cir. 2003). The unreported order of the U.S. District Court for the District of Maryland, which issued no written opinion was entered on December 14, 2001. (App. 29.)

JURISDICTION

The judgment of the Court of Appeals was entered on July 3, 2003. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant provisions of ERISA include its preemption clause, 29 U.S.C. § 1144(a):

> Except as provided in subsection (b) of this section, the provisions of this subchapter . . . shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan. . . .

ERISA's Savings Clause, 29 U.S.C. § 1144(b)(2)(A), is also at issue here:

> Except as provided in subparagraph (B), nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking or securities.

Finally, this appeal involves ERISA's Enforcement Clause, 29 U.S.C. § 1132(a):

> A civil action may be brought – (1) by a participant or beneficiary – . . .

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan.

STATEMENT OF THE CASE

This is a putative class action lawsuit seeking damages from Prudential Health Care Plan ("Prudential"), an HMO, for pursuing subrogation claims against its members, a practice which violated the Maryland HMO Act. *See Riemer v. Columbia Medical Plan*, 358 Md. 222, 747 A.2d 677 (2000). Several similar class actions against other HMOs are pending in Maryland state courts now. Prudential removed this case to federal court, however, claiming federal preemption under ERISA.

However, the Fourth Circuit rejected Prudential's federal preemption defense, correctly holding, applying this Court's clear guidance in *FMC Corp. v. Holliday*, 498 U.S. 52 (1990), plaintiff's claims fall within ERISA's Savings Clause. Nonetheless, the Fourth Circuit held that this case belongs solely in federal court because ERISA completely preempts (and therefore creates exclusive federal jurisdiction and removal jurisdiction over) any civil lawsuit brought by an individual pursuant to any state law regulating the business of insurance.[1]

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[1] About a week after the Fourth Circuit issued the decision below, the Fifth Circuit (sitting en banc) issued a decision in a very similar ERISA preemption case (also involving claims under an anti-subrogation statute) to the same effect. *Arana v. Ochsner Health Plan*, 2003 WL 21554491 (5th Cir. 2003). The en banc decision in Arana reversed a panel of that Court, which had held that such claims should be remanded to state court. *See Arana v. Ochsner Health Plan, Inc.*, 302 F.3d 462 (5th Cir. 2002)

The Court of Appeals' decision was a significant extension of this Court's decision in *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1987), where this Court held that ERISA's Enforcement Clause provides the exclusive remedy for (and thus completely preempts) claims brought to enforce the terms of an ERISA plan or to claim benefits under the terms of an ERISA plan. Plaintiff did not sue under ERISA and does not purport to claim benefits under the actual terms of an ERISA plan. She sued under Maryland state law, which prohibited the unambiguous term that was in Prudential's plan. By equating all claims under state laws that regulate the terms of insurance plans with claims based on the actual terms of ERISA plans, the Fourth Circuit extended *Pilot Life* to completely preempt all state law.

The Fourth Circuit's decision below that all state law claims within ERISA's Savings Clause are completely preempted by and incorporated into ERISA conflicts with the holdings and reasoning of two other U.S. Courts of Appeal. *See Franklin H. Williams Ins. Trust v. Travelers Ins. Co.*, 50 F.3d 144 (2d Cir. 1995); and *Pas v. Travelers Ins. Co.*, 7 F.3d 349 (3rd Cir. 1993). In sharp contrast to the decision of the Fourth Circuit, these courts have held that where plaintiffs make claims under state laws falling within ERISA's Savings Clause, and where those claims are based upon state law rather than the actual terms of the plans, that those claims should be remanded to state court.

The Fourth Circuit's decision also conflicts with decisions of two U.S. Courts of Appeal which have held that claims based upon state laws (as opposed to claims based upon the actual terms of the ERISA plan itself) do not fall within ERISA's Enforcement Clause. *See Dukes v. U.S. Healthcare, Inc.*, 57 F3.d 350 (3d Cir. 1995) and *International Resources, Inc. v. New York Life Ins. Co.*, 950 F.2d 294 (6th Cir. 1992).

The Fourth Circuit's decision that ERISA's Enforcement Clause and ERISA's Savings Clause work in combination to federalize all state law causes of action within the scope of the Savings Clause illustrates the confusion among the lower courts as to the operation and interaction of these two statutory provisions. This Court has adverted tc the issues raised by the relationship of these provisions, *see UNUM Life Ins. Co. of America v. Ward*, 526 U.S. 358 (1999), without resolving this issue. Accordingly, there is now turmoil in the law as to whether ERISA completely preempts all state law claims based upon state regulations of the business of insurance. Put another way, there is great uncertainty among the lower courts as to whether ERISA provides for complete preemption even where there is no conflict preemption.

Plaintiff filed this putative class action against appellee Prudential Health Care Plan, Inc. ("Prudential") in Maryland state court, raising state common law claims arising from alleged violations of certain provisions of the Maryland Health Maintenance Organization Act ("Maryland HMO Act"), Md. Health Gen. Ann. §§ 19-701(f) and 19-710(o). A.2. Ms. Singh was in a car accident, and received $5,000 from the other driver's insurer, Allstate Insurance Company. A.3. Prudential (which was Ms. Singh's insurer) asserted a lien against this recovery, and Ms. Singh paid Prudential's $950.12 to resolve this lien. A.3. The Maryland Court of Appeals has held that such subrogation recoveries by HMOs are illegal under the Maryland HMO Act. *See Riemer v. Columbia Medical Plan*, 358 Md. 222, 747 A.2d 677 (2000). Ms. Singh brought this action to recover this payment under the Maryland common law causes of action for Money Had and Received and negligent misrepresentation. A.3.

Prudential removed the case to federal court, and there urged the district court to dismiss the case, alleging in relevant part that the Maryland HMO Act provisions at issue, and

plaintiffs' claims generally, were preempted by ERISA.[2] Plaintiff moved to remand, and argued that ERISA did not preempt her claims. After a hearing on December 14, 2001, the District Court denied plaintiff's motion to remand, and granted defendant's motion to dismiss. A.22-23.

Plaintiff appealed to the U.S. Court of Appeals for the Fourth Circuit. The Fourth Circuit began by holding that the plaintiff's claims based on the Maryland HMO Act were within ERISA's Savings Clause, App.15, following this Court's holding on that point in *FMC Corp. v. Holliday*, 498 U.S. 52, 60-61 (1990). The Fourth Circuit easily dismissed Prudential's claim "that the subrogation prohibition is not saved because HMOs should not be considered insurers in Maryland," App.11-12, following this Court's holding in *Rush Prudential HMO, Inc. v. Moran*, 536 U.S. 355, 366-367 (2002). The Fourth Circuit further noted that the plaintiff sought no remedies beyond those available under ERISA's Enforcement Clause, App.18-19, and that ERISA contains no provision dealing with the substantive question of subrogation that would conflict with the Maryland HMO Act. App.20.

Nonetheless, the Fourth Circuit held that plaintiff's claims based upon the Maryland HMO Act were completely preempted

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[2] Prudential also argued that plaintiff's claims were barred by a retroactive statute enacted by the Maryland legislature shortly after the *Riemer* case had been decided that permitted HMOs to pursue subrogation within certain limits and under certain circumstances. That issue was rendered moot when the Maryland Court of Appeals held that the retroactive provisions of the state legislation permitting HMOs to pursue subrogation violated the Maryland Constitution. *Dua v. Comcast/Harvey v. Kaiser Foundation Health Plan*, 805 A.2d 1061 (Md. 2002),

by ERISA. The Court held that "[a] State law preserved as a regulation of insurance under § 514(b)(2)(A) may supply a substantive term or mandate a benefit in an employee benefit plan, but once that term or benefit becomes part of the plan, a suit to enforce it may only be brought under § 502(a)." App. 21. Accordingly, the Fourth Circuit concluded, plaintiff's cause of action amounted to a claim for entitlement to the "lawful" terms of the plan. App.21-26. As a result, these claims were "conver[ted] into federal claims . . . [that] must now be decided by the district court." App.22. The Court of Appeals' decision contained no limitation that would prevent its rationale from converting any claim by an ERISA plan member based upon any state law that falls within ERISA's Savings Clause into a federal claim.

Accordingly, the Fourth Circuit reversed the district court's order dismissing the case, but affirmed the district court's order denying plaintiff's motion to remand.

REASONS FOR GRANTING THE WRIT

The petition for certiorari should be granted because the lower courts are in a state of confusion as to the proper relationship of ERISA's Enforcement Clause and ERISA's Savings Clause. While the Fourth Circuit below and the Fifth Circuit in *Arana* concluded that any action to enforce a state regulation of insurance is necessarily also a claim for benefits under the plan and thus is completely preempted, a number of courts (including the Second and Third Circuits) have held that such actions constitute state law action and should properly be decided by state courts.

The lower federal courts are also in conflict over the question of what cases fall within ERISA's Enforcement Clause. A number of federal courts of appeal (and particularly the U.S. Courts of Appeals for the Third and Sixth Circuits)

have held that claims brought under a variety of state laws do not fall within ERISA's Enforcement Clause. These holdings necessarily contradict the Fourth Circuit's notion that all state laws should be treated as "terms" of ERISA plans under the Enforcement Clause.

The Fourth Circuit's opinion below is not only in conflict with the decisions of numerous other courts, but it also represents an enormous and unjustified expansion of federal jurisdiction over claims that are entirely based upon state law. The Court has directed that federal law only completely preempts and displaces state law when one of two conditions is present: a statute expressly completely preempts state law, or Congress intended to preempt an entire field. None of those rationales supports the sweeping increase in federal jurisdiction imposed by the Court below.

In addition, the Fourth Circuit's interpretation violates this Court's guidance by turning the whole idea of the Savings Clause on its head. Instead of "saving" the state law – preserving it from preemption – the Fourth Circuit transforms the entire category of state laws that regulate insurance into federal law. Under the Fourth Circuit's opinion, these state laws no longer exist in their own right, but are instead nationalized and federalized so that their only existence is as a component of federal law. This interpretation violates basic principles of federalism and will create a number of anomalies and difficulties.

This Court should grant the petition to resolve the conflict among the lower courts, and to confirm that saved state laws are actually saved and not federalized. In this case, that means that ERISA does not preempt the plaintiff's causes of action at all, much less "completely preempt" them, and therefore the matter should be remanded to the state court.

ARGUMENT

I. THIS COURT SHOULD GRANT *CERTIORARI* TO RESOLVE THE QUESTION OF WHETHER CAUSES OF ACTION HELD TO BE WITHIN ERISA'S SAVINGS CLAUSE SHOULD BE REMANDED TO STATE COURT.

A. In Contradiction to the Holding of the Court Below, Numerous Courts (Including Two U.S. Courts of Appeals) Have Held That Causes of Action Within ERISA's Savings Clause Must Be Remanded to State Court.

A number of courts have held that if a plaintiff brings a claim under a state law that is saved from preemption by the Savings Clause, a federal court may not proceed to resolve the case on the merits unless the plaintiff is making claims for benefits under the terms of the plan (as opposed to bringing a claim that arises solely from the state law). These Courts have held that in this setting, there is no conflict preemption, much less complete preemption. Accordingly, there is no federal jurisdiction, and the case must be remanded to state court. In *Franklin H. Williams Ins. Trust v. Travelers Ins.*, 50 F.3d 144, 149 (2nd Cir. 1995), a beneficiary of an ERISA plan brought a claim based upon a New York statute requiring that the interest on proceeds of a life insurance policy be computed from the date of death. *Franklin H. Williams*, 50 F.3d at 146. The district court held (as the Fourth Circuit held in this case) that the plaintiff's claims fell within ERISA's Savings Clause, but nonetheless were preempted under ERISA's Enforcement Clause. *Id.*, 50 F.3d at 146-47.

As in this case, the Second Circuit in *Franklin H. Williams* agreed with the district court that the New York statute fell within ERISA's Savings Clause. *Id.*, 50 F.3d at 151. The

Second Circuit drew a very different conclusion from this fact than did the Fourth Circuit below or the Fifth Circuit in *Arana,* however. The Second Circuit stated that "first there must be preemption, which is a necessary precondition to removal. Thus, when preemption is precluded by the saving clause, removal is also barred." 50 F.3d at 151. Accordingly, in *Franklin H. Williams*, the Second Circuit reached the precise opposite conclusion as the Fourth Circuit below and the Fifth Circuit in *Arana*: once the court found that a New York statute fell within ERISA's Savings Clause, it remanded the case to the district court with directions that the case should be remanded to the state court. "We conclude that [the state statute] is saved from preemption under ERISA. Accordingly, removal was improper." 50 F.3d at 151. The conflict between the Second Circuit in that case and the Fourth Circuit here and the Fifth Circuit in *Arana* could hardly be more plain.

The Third Circuit has also come to the opposite conclusion of the Fourth Circuit here. In *Pas v. Travelers Ins. Co.*, 7 F.3d 349, 356 (3rd Cir. 1993), a member of an ERISA plan brought claims based upon two New Jersey statutes against a disability insurer that refused coverage for a bipolar disorder. The district court held that the plaintiff's claims fell within ERISA's Savings Clause, and remanded her case to the state court. The insurer sought a writ of mandamus, arguing both (a) that the plaintiff's claims did not fall within ERISA's Savings Clause, and (b) that, even if the claims did fall within the Savings Clause, there was complete preemption under ERISA's Enforcement Clause. The Third Circuit agreed with the district court that the plaintiff's claims fell within ERISA's Savings Clause. *Pas*, 7 F.3d at 356. The court then turned to the insurer's argument under ERISA's Enforcement Clause. The Third Circuit explicitly noted that some courts of appeal had agreed with the insurer's position, and forcefully disagreed:

> We recognize that cases from other courts of appeals may be read to support Travelers' position on conflict preemption. *See, e.g.*, . . . *Ruble v. UNUM Life Ins. Co.*, 913 F.2d 295, 297 (6th Cir. 1990) (concluding that case was removeable to federal court because, "[r]egardless of how Michigan's insurance code might have modified the terms of the . . . insurance policy . . . any action brought by a beneficiary to enforce the policy as so modified could only be brought under § 502 of ERISA. . . ."). However, if we correctly read those cases as reaching a result contrary to the one we reach here, our preference is understandably for our own result. . . . Accordingly, we find no evidence that the district court abused its discretion in remanding the claim.

Id., 7 F.3d at 356-57 (footnote omitted).[3]

To further demonstrate the division of the lower courts as to the issue posed here, the Ninth Circuit appears to have come down on both sides at different points. In one case, that court found that ERISA's Enforcement Clause completely preempted a California statute that fell within ERISA's Savings Clause. *See Kanre v. Connecticut Gen. Life Ins. Co.*, 867 F.2d 489, 493-94 (9th Cir. 1988). In another case, the Ninth Circuit held that "complete preemption occurs under ERISA if (1) ERISA preempts the plaintiff's cause of action **and** (2) the cause of action falls within the scope of [ERISA's Enforcement

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[3] As Part II below demonstrates, the Sixth Circuit's position is not so clear on this issue as the *Ruble* case suggests. In two other cases, the Sixth Circuit has held that state law claims are not necessarily incorporated into ERISA's Enforcement Clause. *See International Resources, Inc. v. New York Life Ins. Co.*, 950 F.2d 294 (6th Cir. 1992) and *Warner v. Ford Motor Co.*, 46 F.3d 531 (6th Cir. 1995). The position rejected by the Third Circuit in *Pas*, however, *is* clearly the same as the Fourth Circuit's position below.

Clause]." *Emard v. Huges Aircraft Co.*, 153 F.3d 949, 953 (9th Cir. 1998) (emphasis added). This holding that a cause of action must both fall within § 1144's ambit, **and** fall within the Enforcement Clause to give rise to complete preemption is contrary to the disjunctive approach of the Fourth Circuit, which would find complete preemption whenever a case is excluded from § 1144 by the Savings Clause.[4]

One U.S. District Court has accurately described the state of law on the question presented by this Petition as constituting a "conflict between the Circuits." *Tovey v. Prudential Inc. Co. of America*, 42 F. Supp.2d 919, 923 (W.D. Mo. 1999). The *Tovey* court noted that "[s]everal courts of appeals have created a two-part test for complete preemption, first determining whether the state law claim is preempted by ERISA § 514, and then considering whether the claim falls within the scope of ERISA § 502." 42 F. Supp.2d at 923. Unless both parts of the test are met (unlike here), there is no complete preemption and the case belongs in state court.

The Second and Third Circuits' adoption of this two-part test is joined by a host of U.S. district court decisions. Many district court judges have remanded cases falling within ERISA's Savings Clause to state court, a disposition which inherently contradicts with the approach and holding of the Fourth Circuit in this case. *See, e.g., Haag v. Hartford Life and Accident Ins. Co.*, 188 F. Supp. 2d 1135, 1141 (D. Minn. 2002) ("We conclude that Minn. Stat. § 61A.011, Subd. 1 is a

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[4] The Tenth Circuit's position is less clear, but in a somewhat analogous case it has rejected a complete preemption argument as to claims that it found to be within ERISA's Savings Clause. *Cf. Dang v. UNUM Life Ins. Co. of America*, 175 F.3d 1186, 1192 (10th Cir. 1999) (rejecting insurer's argument that ERISA so completely preempts the area that federal common law should govern over Oklahoma's notice-prejudice rule, and finding that Oklahoma's law was "not preempted" under ERISA's Savings Clause).

Minnesota law which regulates insurance within the meaning of the ERISA clause which saves such laws from preemption, 29 U.S.C. § 1144(b)(2)(A). Since the Minnesota statute is not preempted by ERISA, there is no federal jurisdiction over Plaintiff's Complaint."); *Macro v. Indep. Health Ass'n,* Inc., 180 F. Supp.2d 427 (W.D.N.Y. 2001) (subscribers claims against HMO were within ERISA's Savings Clause, the case was remanded to state court); *Hill v. Blue Cross Blue Shield of Alabama*, 117 F. Supp. 2d 1209, 1213 (N.D. Ala. 2001) (after finding that case was within Savings Clause, "it follows that this court lacks subject matter jurisdiction in this case. There being no federal question . . . , the court will grant Mr. Hill's motion to remand by separate order."); *Blue Cross and Blue Shield of Alabama v. Fondren*, 966 F. Supp. 1093 (M.D. Ala. 1997) (Alabama's law of subrogation was saved from ERISA preemption as being within ERISA's Savings Clause, and therefore the case was dismissed without prejudice on the grounds that there was no federal jurisdiction); *Cellilli v. Cellilli*, 939 F. Supp. 72, 79 (D. Mass. 1996) (remanding claim brought under state statute providing for continued coverage for divorced spouses, once the court had determined that the statute was saved from ERISA preemption: "In addition, there being no subject matter jurisdiction, the court recommends that the matter be remanded to the state court for further proceedings."); *LaFuria v. Louisiana Health Serv. Indemnity Co.*, 826 F. Supp. 1017, 1018 (W.D. La. 1993) (the court remanded a doctor's suit against a group health insurance company back to state court because the state laws under which the claim was brought "are exempt from preemption of ERISA under the 'saving clause' of the act."); *Graves v. Blue Cross of Calif.*, 688 F. Supp. 1405 (N.D. Cal. 1988) ("In cases where the state law in question is insurance regulation within the meaning of the saving clause, . . . the state law is not preempted . . . and this court lacks subject matter jurisdiction over the case. The motion to remand is therefore granted."); *Levine, Benjamin, Tushman, Bratt, Jervis and Stein, P.C. v. Paul Revere Life Ins. Co.*, 875 F. Supp.

404 (E.D. Mich. 1995) (Michigan statute on liens in workers compensation cases was within ERISA's Savings Clause, so the case was remanded to state court); *Lessard v. Metropolitan Life Ins. Co.*, 618 F. Supp. 1268, 1273 (D. Me. 1985) (state law contract claim for payment of disability benefits was saved from preemption, and "[s]ince the claims of the original complaint were not preempted and there is no other basis for federal jurisdiction, this case was improvidently removed and must be remanded [to the Maine Superior Court]."); *Donlan v. Greater Regional Transit Authority*, 2000 WL 485268 (N.D. Ohio Mar. 21, 2000) (insured's claim that plan may not pursue subrogation was within ERISA's Savings Clause, and was remanded to state court); and *Trapanotto v. Aetna Life Ins. Co. - Aetna Health Plans*, 1996 WL 417519 (S.D.N.Y July 25, 1996) (insured's claims under the New York insurance code were within ERISA's Savings Clause, the case was remanded to the state court). Under the Fourth Circuit's approach, every one of these ten decisions is simply wrong.

The Fourth Circuit's decision in this case is also implicitly in conflict with the holding and approaches of numerous state appellate courts. As set forth above, under the Fourth Circuit's categorical approach, federal courts have exclusive jurisdiction over the claims of every ERISA plan member under any state law regulating the business of insurance. Accordingly, under that approach, no state court should ever address the merits of any plan member's argument that some claim is within ERISA's Savings Clause. Notwithstanding the Fourth Circuit's logic, a number of state appellate courts have addressed such issues and have held that claims were saved under ERISA's Savings Clause. *See, e.g., Harvey v. Members Employees Trust for Retail Outlets*, 748 N.E.2d 1061 (N.Y. 2001) (claims based upon mandated coverage statute saved from preemption by ERISA); *Bennett v. Indiana Life and Health Ins. Guaranty Ass'n*, 688 N.E.2d 171 (Ind. Ct. App. 1997) (Insurance Commissioner order requiring guaranteed payments in case of

insolvency within ERISA's Savings Clause); *Greenville Hosp. System v. Provident Life & Acc. Inc. Co.*, 499 S.E.2d 232 (S.C. Ct. App. 1999) (statute requiring succeeding carrier to cover participant in prior plan at certain level of benefits was saved from preemption); and *Kavelaris v. MSI Ins. Co.*, 631 N.W.2d 665 (Wis. Ct. App. 2001) (the state's "make whole" doctrine limiting the amount of subrogation that an insurer could claim was not preempted because it was within ERISA's Savings Clause). Under the Fourth Circuit's approach, none of these decisions could have been reached because none of these courts had jurisdiction to even consider these questions.

In short, the interrelationship between ERISA's Savings Clause and ERISA's Enforcement Clause continues to trouble and confuse the lower courts. This Court should grant *certiorari* to resolve this question and to eliminate this confusion.

B. This Court Has Noted the Importance of the Question of How ERISA's Savings Clause and Enforcement Clause Interrelate, But Has Not Yet Resolved that Question.

This Court has taken note of the complex relationship between ERISA's Savings Clause and its Enforcement Clause, but has not resolved the subject. *See, e.g., UNUM Life Ins. Co. of America v. Ward*, 119 S. Ct. 1380, 1390 (1999):

> UNUM next contends that [ERISA's Enforcement Clause] preempts any action for plan benefits brought under the state rules such as notice-prejudice. Whatever the merits of UNUM's view of § 502(a)'s preemptive force, the issue is not implicated here.

(Footnote omitted). In this case, by contrast, the issue of how these provisions interact is not only implicated, it is central.

In *Rush Prudential HMO, Inc. v. Moran*, 122 S. Ct. 2151 (2002), this Court made a comment in dicta about the apparent impact of the Enforcement Clause on complete preemption in a Savings Clause case. Even though this Court held that the plaintiff's claims fell within the Savings Clause, this Court noted that the district court's decision to remand the case was "questionable." *Moran*, 122 S. Ct. at 2157 n. 2. In *Arana*, which involved insureds bringing claims under a state anti-subrogation statute much like the one involved in this case, the Fifth Circuit took the equivical comment in footnote 2 of *Rush Prudential* as resolving the issues posed in this Petition in favor of complete preemption. 338 F.3d at 440. The Fifth Circuit's conclusion in this respect ignores great differences between the *Rush Prudential* case and the facts of *Arana* itself and of this case. In *Rush Prudential*, the plan promised coverage for "medically necessary" services, 122 S. Ct. at 2156, and the plaintiff's complaint sought "reimbursement for the surgery as 'medically necessary' under Illinois's HMO Act." *Id.* at 2156. Accordingly, this Court not surprisingly characterized the claim as "akin to a suit to compel compliance with the terms of a plan. . . ." *Id.* at 2157 n. 2. In this case, by contrast, as discussed below, the actual terms of the plan permit, rather than forbid, subrogation. This Court's comments in *Rush Prudential* shed no light on the situation here – where state law forms the basis of plaintiff's claims and the relief sought is directly contrary to the actual written terms of the plan. This Court should grant this Petition to clear up the confusion that has arisen from the statement in footnote 2 of *Moran*.

II. THERE IS A SPLIT AMONG THE CIRCUITS OVER WHETHER CLAIMS BASED SOLELY ON STATE LAW WITHOUT REFERENCE TO PLAN TERMS FALL WITHIN ERISA'S ENFORCEMENT CLAUSE.

ERISA's Enforcement Clause creates a cause of action for a plan beneficiary seeking "to recover benefits due to him *under*

the terms of his plan, to enforce his rights *under the terms of the plan*, or to clarify his rights to future benefits *under the terms of the plan*." 29 U.S.C. §1132(a) (emphasis added). For a cause of action to arise under §1132(a), it must seek enforcement of the beneficiaries' rights under the plan. In short, a §1132(a) action is in the nature of a contract dispute, asking the question, "What benefits do the terms of this plan provide?"

This case is *not* such a dispute. Ms. Singh's case does not fall within § 1132(a), because she is not attempting to enforce her rights or to clarify her benefits under actual terms of her ERISA plan. Rather, she argues that the written terms of her plan are illegal under the Maryland HMO Act. The Fourth Circuit held, however, that even these claims fit within ERISA's Enforcement Clause because the phrase "the terms of the plan" in ERISA's Enforcement Clause does not merely refer to the actual terms of the plan, but also refers to any laws that apply to the terms of any ERISA plan.

The Fourth Circuit's expansive approach is counter to the holdings of a number of U.S. Courts of Appeal which have found that various state law claims did not constitute claims under ERISA's Enforcement Clause. In *Dukes v. U.S. Healthcare, Inc.*, 57 F.3d 350 (3d Cir. 1995), the court rejected the assertion that a medical malpractice claim arising under state law fell within §1132, noting that §1132 is focused upon the benefits and rights under the terms of the plan itself. Under the approach of the Fourth Circuit here, the court in *Dukes* should have held that the state's laws of medical negligence were automatically incorporated into the plan, and therefore the plaintiff's claims should have fallen within ERISA's Enforcement Clause. Unlike the Fourth Circuit, however, the court in *Dukes* rejected the argument that a medical negligence case somehow involved a claim to recover benefits due under the plan. "On its face, a suit 'to recover benefits due . . . under the terms of [the] plan' is concerned exclusively with whether

or not the benefits due under the plan were actually provided." 57 F.3d at 357.

The Sixth Circuit has also rejected the notion that ERISA automatically incorporates all state laws. In *International Resources, Inc. v. New York Life Ins. Co.*, 950 F.2d 294 (6th Cir. 1992), the Court of Appeals found that the plaintiff's claims under a Kentucky statute prohibiting unfair and deceptive acts by insurers were within ERISA's Savings Clause. When the insurer argued that those claims were nonetheless preempted by ERISA's Enforcement Clause (as interpreted by this court in *Pilot Life*), the Sixth Circuit rejected the idea that the Enforcement Clause incorporated the state cause of action:

> Thus, because we cannot fairly assume the activity Kentucky is regulating through its conversion statute is protected or guaranteed by an ERISA remedy, the *Pilot Life* analysis is inapplicable and the Kentucky statute survives preemption.

International Resources, 950 F.2d at 301. In *Warner v. Ford Motor Co.*, 46 F.3d 531 (6th Cir. 1995), similarly, the Court of Appeals held that the plaintiffs brought "a straight state age discrimination case which has no counterpart or superseding cause of action in ERISA." *Warner*, 46 F.3d at 534. Under the Fourth Circuit's approach in this case, the state statute should have been "transformed" into a federal claim under ERISA's Enforcement Clause. The Sixth Circuit (en banc) reached the opposite conclusion, however, and held that plaintiff's claims "ha[d] none of the characteristics of a § 1132(a)(1)(B) action to enforce the ERISA agreement," and the case was not preempted. *Id.*, 46 F.3d at 534.

Finally, while these cases do not pose a circuit split on the facts and issues posed by this case, several other Courts of Appeals have generally held that the Enforcement Clause

should be construed narrowly. *See Allstate Ins. Co. v. 65 Sec. Plan*, 879 F.2d 90, 94 (3rd Cir. 1989); *Gulf Life Ins. Co. v. Arnold*, 809 F.2d 1520, 1524 (11th Cir. 1987). It is indisputable that the Fourth Circuit's reading of the clause in this case is anything but narrow.

III. THE FOURTH CIRCUIT'S DENIAL OF PLAINTIFF'S MOTION TO REMAND IN THIS CASE IS IN ERROR AND SHOULD BE REVERSED.

The Fourth Circuit's position is a sweeping, even radical expansion of federal authority under ERISA, and is in error. The Fourth Circuit transforms broad areas of state law into federal law in a manner that is not supported by basic principles of federal preemption law and which contradicts the structure of ERISA. Under the Fourth Circuit's approach, there is now exclusive federal jurisdiction over every imaginable lawsuit brought by a plan member based upon a state law regulating the business of insurance, and a host of garden-variety state insurance law cases that are handled perfectly well by state courts will necessarily all be moved into already busy federal courts.

There is no justification for the great infringement upon state law mandated by the Court of Appeals' decision. As this Court has made clear, ERISA should only be found to preempt state law when the grounds for preemption are extremely clear. *See De Buono v. NYSA-ILA Medical and Clinical Servs. Fund*, 520 U.S. 806, 815 (1997) ("Respondents therefore bear the considerable burden of overcoming 'the starting presumption that Congress does not intend to supplant state law.'") (citation omitted); *Pegram v. Hertrich*, 530 U.S. 211, 237 (2000) ("in the field of health care, a subject of traditional state regulation, there is no ERISA preemption without clear manifestation of congressional purpose.").

The Court of Appeals' decision in this case fails these tests. Congress never clearly manifested anything approaching an intention to completely preempt all state laws in this area. As this Court has made clear, there are two recognized situations where federal law completely preempts state law: "when Congress expressly so provides, . . . or when a federal statute wholly displaces the state-law cause of action through complete preemption." *Beneficial Nat'l Bank v. Anderson*, 123 S. Ct. 2058, 2063 (2003). State courts may only be sidestepped in our federal system when one of these two conditions is present.

The enormous expansion of federal jurisdiction and the sweeping preemption of state law contained in the Court of Appeals' decision is not justified by any of these rationales. First, it can scarcely be claimed that plaintiff's claims are expressly preempted, when (as the Court of Appeals recognized) those claims fall within a Savings Clause that carves those claims out from the Act's express preemption provision.

Second, while this Court did hold that ERISA completely preempts the entire field of regulation in certain circumstances, it did so in a setting that did not involve ERISA's Savings Clause. *See Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58 (1987). As this Court has recognized, ERISA's Savings Clause "substantially qualifie[s]" ERISA's Preemption Clause. *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 733 (1985). It is incoherent to suggest that Congress intended to completely preempt a field of law but also intended for substantive state regulations in that field to survive.

In the field of conflict (as opposed to complete preemption), implied preemption arises only when there is an "actual conflict" between federal and state law, either because it would be "impossible for a private party to comply" with both

or because the state law "stands as an obstacle to the accomplishment and execution of the full purposes of Congress." *Freightliner Corp. v. Myrick*, 514 U.S. 280, 287 (1995). When this Court briefly discussed complete preemption in footnote 2 of the *Rush Prudential* case, it appeared that this Court was indicating that complete preemption was appropriate there because otherwise a state action would conflict with ERISA's Enforcement Clause. *Moran*, 122 S. Ct. at 2157 n. 2.

It cannot seriously be maintained that it would stand as an obstacle to Congress's intentions to allow a Maryland state court to adjudicate claims brought under the anti-subrogation provisions of the Maryland HMO Act. There is no actual conflict in this case, as ERISA embodies no substantive rule with respect to subrogation. *See Member Servs. Life Ins. Co. v. American Nat'l Bank and Trust Co. of Sapulpa*, 130 F.3d 950, 958 (10th Cir. 1997) ("ERISA says nothing about subrogation provisions. ERISA neither requires a welfare plan to contain a subrogation clause nor does it bar such clauses or otherwise regulate their content."), *quoting Ryan v. Federal Express Corp.*, 78 F.3d 123, 127 (3d. Cir. 1996). In addition, as the Court of Appeals noted below, the plaintiffs seek no remedy beyond those provided by ERISA.

The only argument that complete preemption is required here to keep state law from serving as an obstacle to federal law depends upon the Fourth Circuit's odd reading of ERISA's Enforcement Clause. The argument runs something like this: it conflicts with ERISA's plan for any state court to hear a claim falling within ERISA's Enforcement Clause, and any possible state law claim against an ERISA plan will always be within ERISA's Enforcement Clause. But as Part II above establishes, and as the Third and Sixth Circuits have held, the Enforcement Clause involves claims seeking to recover benefits or enforce or clarify rights "under the terms of the plan," and not every state law claim is such a claim. No equivalent to the

Anti-Subrogation Provisions of the Maryland HMO Act can be found in the plan. The complaint cites to no provision or section of the plan as the source of the plaintiff's claims. Plaintiff's cause of action entirely arises from a legal authority that is outside of and independent from the plan. Similarly, Ms. Singh is not seeking to clarify her rights to future benefits under the terms of the plan. None of the terms of the plan are in dispute. No court resolving the plaintiff's claims would be required to "construe" the plan – its provisions are unambiguous. No court resolving the plaintiff's claims would be required to enforce or clarify the participants' benefits under the terms of the plan. Instead, Ms. Singh is asking a Maryland state court to apply a Maryland statute regulating insurance. There is no basis to suggest that permitting a state court to adjudicate such a state law cause of action would stand as an obstacle to ERISA's Enforcement Clause.

The Fourth Circuit's decision also is counter to the structure of ERISA. In *Pilot Life*, this Court concluded that Congress intended federal courts to have exclusive jurisdiction of claims within ERISA's Enforcement Clause, as a means of ensuring that the Enforcement Clause would be given a uniform treatment nationwide. ERISA's Savings Clause, however, represents an exception to the rule of federal uniformity. As this Court has noted, the existence of the Savings Clause will sometimes result in disuniformities between states, but has held that "[s]uch disuniformities . . . are the inevitable result of the congressional decision to 'save' local insurance regulation." *Rush Prudential HMO*, 122 S. Ct. at 2167 (citation omitted).

It is counter to the idea of the Savings Clause to suggest that Congress intended to federalize causes of action whose sole origin lies in state laws that are traditionally within the purview of state governments *and* that Congress chose to save from federal preemption. Moving all cases involving state insurance regulations into already very busy federal courts serves no

federal purpose. Putting cases arising under state law into federal court does not serve any purpose of uniformity, because the substance of the cause of action is dictated by state laws that can and do differ from state to state. The automatic redistribution of these differing state laws disrespects the states and contradicts fundamental principles of federalism.

The Court of Appeals' decision also gives rise to a series of anomalies. First, under the Fourth Circuit's approach, federal courts will dictate the substantive content of all state laws that regulate the business of insurance. In the leading Maryland case dealing with the Maryland HMO Act, the state court engaged in an extensive discussion of the state statute's multiple interlocking provisions, its legislative history, and its relation to decades of state common law relating to the collateral source doctrine. *Riemer v. Columbia Medical Plan*, 358 Md. 222, 747 A.2d 677 (2000). There is no conceivable reason why Congress would have insisted that only federal courts should be permitted to so explicate or develop state law. Second, under the Fourth Circuit's approach, federal courts expounding upon the new federal law will be responsible for developing diverse, non-uniform law. Instead of federal law being truly national law, the Fourth Circuit's approach would necessarily result in federal courts issuing decisions resulting in different results and different policies in different states, because the substance of these laws will be dictated by state law.

The enormous expansion of federal jurisdiction – and the enormous narrowing of the field of state law – embraced by the Court below finds no justification in the law of federal preemption, in the structure or purposes of ERISA, or in common sense and logic. This Court should clarify that claims falling within ERISA's Savings Clause, that do not involve the enforcement or interpretation of the actual terms of the ERISA plan itself, are not completely preempted.

CONCLUSION

This petition for writ of *certiorari* should be granted.

Respectfully submitted,

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